



RSSGROUP
REGULATORY STRATEGIES AND SOLUTIONS
GROUP LLC

Designing Effective Public Consultation Mechanisms

Nathan Frey
Regulatory Strategies and Solutions Group

September 24, 2020



Public Consultation Benefits

- Incorporates the expertise, perspectives, and ideas for alternative actions of those directly affected;
- Helps regulators balance opposing interests;
- Identifies unintended effects and practical problems.
- Provides a quality check on the administration's assessment of costs and benefits;
- Identifies interactions between laws and policies from various parts of government
- Avoid unintended consequences



When and Why Consult?

- Businesses need to fully understand the regulatory environment in which they operate and to have a voice in regulatory decision making.
- Consultation should be done at the **earliest stages** of the regulatory process and if possible at **various stages** so that it helps governments collect data and the results can be used effectively in the RIA.
- Early consultation can spot in a timely way mistakes in problem identification and the proposed solutions



A Whole of Government Approach

- **Uniform application of notice and comment procedures**
 - Improved policy coherence
 - Predictability
 - Increased participation rates
 - Ease of administrative management
 - Promotes cultural change more efficiently
 - Promotes cooperation and learning among ministries
 - Implementation requires political commitment and highest level



Responding to Public Comments

- Should all public comments be treated the same?
 - “Likes” vs substantive comments with objective evidence, analysis to support specific changes
- Obligation to respond to comments
 - Responses to substantive comments should provide reasoned basis for why changes were made or not
 - Critical to engender stakeholder confidence in the process
 - Criteria to determine need for substantive changes as a result of comments?
- Handling large volumes of comments
 - IT solutions – look to U.S. examples



Comment Period Duration

- Is the consultation period of sufficient duration for interested parties to submit considered and meaningful responses?
 - Stakeholders need to fully understand requirements, tradeoffs of policy options
- More complex regulatory changes require longer comment periods for
- Clear process and criteria for granting extensions
- Why would regulations impacting particular economic sectors require more or less time for consultation?



Stakeholder Analysis

All interested parties can provide valuable information

- Businesses
- Consumers
- Trade partners
- Advocacy groups
- The citizenry

Advisory Committees and ex-parte communication

- Industry Trade Advisory Councils
- Federal Advisory Committee Act

Stakeholder Aggregators

- Industry Trade Associations/Coalitions
- Chambers of Commerce and Industry
- Business Cooperatives
- Citizen advocacy groups



Policy Options

● Notification

- ✓ Providing for public notice and registration of regulatory policies
- ✓ For every regulation?
- ✓ Are regulated entities always aware of the pending changes?

● Consultation

- ✓ Active engagement of stakeholder views
- ✓ For every regulation? Only some groups?

● Participation

- ✓ Multiple stages of interaction on all relevant documents and analyses
- ✓ Documentation and responses to input?



Tools of Public Consultation

- Informal consultation
 - ✓ Conducted at discretion of regulators (ad-hoc)
- Circulation of regulatory proposals for public comment
 - ✓ Presentation of concrete proposals
 - ✓ More systematic, inclusive
- Public notice and comment
 - ✓ Standardized, formal presentation of draft regulations and supporting documents
- Public Hearings
 - ✓ Usually supplements other consultation procedures
- Advisory bodies
 - ✓ Technical groups advising on concrete policy issues



Screening Criteria

- Should all rules be subject to the same requirements?
 - Length of comment period, scope of consultation procedures, weight of evidence to support policy change, etc.
 - 60 day minimum comment period for regulations
- Why would it be important to conduct public consultation in one sector but not another?

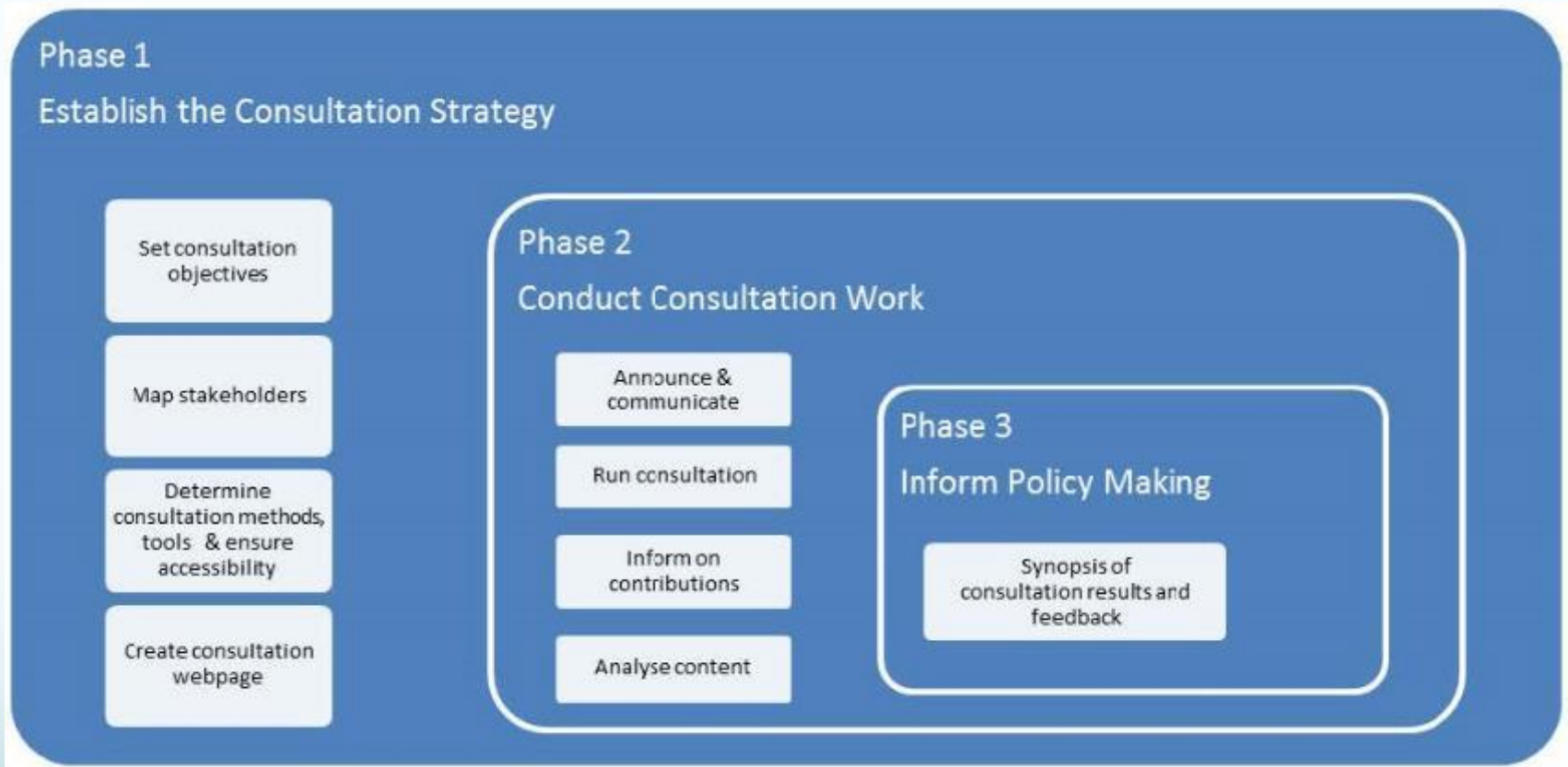


Soliciting Useful Information

- Regulators should identify and map stakeholders during development of regulatory proposals
- Design specific, targeted questions to elicit desired responses, data desired
- Publication of RIA concurrently with regulatory proposals
 - Allows public opportunity to comment on costs and benefits or regulatory options and associated tradeoffs



The Consultation Process



Key Takeaways

- Consistent, easy to understand, transparent regulatory processes are more attractive to businesses
- When all interested parties have the opportunity to inform regulatory policies they become more efficient and effective
- Consultation should be done at the earliest stages of the policy development process and if possible at various stages so that it helps governments collect data and the results can be used effectively.



Key Implementation Questions

- Is the public consultation mandatory? Are guidelines available on how to conduct public consultation?
- How open is the consultation? Can anyone participate?
- Has the consultation been launched at a stage when there is still scope to influence the policy outcome? Is the consultation conducted at the beginning of the regulatory proposal or at a later stage of the process?
- Is the consultation exercise of sufficient duration for interested parties to submit considered and meaningful responses?
- Will results of the consultation be made public?
- Does a process exist to monitor and oversight the quality of the consultation process?



Recommendations

- Without a legal basis or strong policy commitment, public consultation can be difficult to implement consistently
- Easy to understand, transparent regulatory processes are more attractive to businesses
- When all interested parties have the opportunity to inform regulatory policies they become more efficient and effective
- Consultation systems should be designed according to each country's context
- Involve all interest groups early in the process through transparent consultation procedures
- Establish public registries of pending and existing regulations
- Have all interested parties had an opportunity to present their views?



Thank you!

Nathan Frey

www.rssgroupllc.com

nathan.frey@rssgroupllc.com

T: 202 590 7469

